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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 01, 2019
86th Legislature, Number 56
The House convenes at 10 a.m.
Part One

The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 56

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 01, 2019
86th Legislature, Number 56
Part 1

SUBJECT: Creating Texas Emissions Reduction Plan trust fund, extending fees

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Lozano, Kuempel, Morrison, Reynolds, J. Turner, Zwiener

0 nays

3 absent — E. Thompson, Blanco, Kacal

WITNESSES: For — Kathy Barber, Caterpillar Inc.; Cyrus Reed, Lone Star Chapter Sierra Club; Sam Gammage, Texas Chemical Council; (*Registered, but did not testify*: June Deadrick, CenterPoint Energy; Christine Wright, City of San Antonio; Daniel LeFevers, Gas Technology Institute; Mark Vane, Husch Blackwell Strategies; Adrian Shelley, Public Citizen; Mia Hutchens, Texas Association of Business; Mark Vickery, Texas Association of Manufacturers; Windy Johnson, Texas Conference of Urban Counties; Vanessa MacDougal; Elisa Saslavsky)

Against — None

On — Elizabeth Sifuentez-Koch, Texas Commission on Environmental Quality; (*Registered, but did not testify*: Donna Huff, Texas Commission on Environmental Quality)

BACKGROUND: In 2001, the 77th Legislature created the Texas Emissions Reduction Plan (TERP) to provide financial incentives to eligible individuals, businesses, and government entities to reduce emissions from vehicles and equipment and help the state achieve federal Environmental Protection Agency air quality standards, or "attainment."

SB 1731 by Birdwell, enacted in 2017 by the 85th Legislature, extended TERP from August 31, 2019, to the last day of the fiscal biennium in which the state attained compliance with federal ambient air quality standards for ground-level ozone.

According to the Legislative Budget Board, the TERP account is

estimated to have a balance of $1.7 billion at the end of fiscal 2019 after receiving an estimated $486.8 million in revenue in fiscal 2018-19.

The account is funded from certain fees and surcharges, including:

- a surcharge on certain off-road, heavy-duty diesel equipment, under Tax Code sec. 151.0515;
- a surcharge on the sale or use of an on-road diesel motor vehicle over 14,000 pounds, under Tax Code sec. 152.0215;
- an amount equal to certain revenue from vehicle title fees in nonattainment areas, transferred from the State Highway Fund to the TERP account under Transportation Code sec. 501.138;
- a surcharge on the registration of a truck-tractor or commercial motor vehicle, under Transportation Code sec. 502.358; and
- a fee for the inspection of a commercial motor vehicle, under Transportation Code sec. 548.5055.

The above surcharges and fees expire August 31, 2019.

DIGEST:

CSHB 3745 would extend the assessment of surcharges and fees for the Texas Emissions Reduction Plan (TERP) and create the TERP trust fund.

Continuation of surcharges and fees. The bill would extend the expiration date of TERP surcharges and fees from September 1, 2019, to the last day of the fiscal biennium in which the state attained compliance with federal ambient air quality standards for ground-level ozone.

TERP trust fund. The bill would create the Texas Emissions Reduction Plan Fund as a trust fund outside the state treasury held by the comptroller and administered by the Texas Commission on Environmental Quality (TCEQ) as trustee. Money in the fund could be spent without legislative appropriation and used only to implement and administer TERP programs according to current law. Interest and other earnings on the balance of the fund would be credited to the fund.

The TERP fund would consist of:

- funds paid for nitrous oxide emissions in certain nonattainment areas;
- surcharges and fees assessed for TERP; and
- grant money recaptured under the Diesel Emissions Reduction Incentive Program and the New Technology Implementation Grant Program.

TCEQ would have to transfer the unencumbered balance of the TERP fund to the credit of the TERP account within 30 days after the end of each fiscal biennium.

The bill would not affect the balance of the TERP account remaining on September 1, 2019. The bill would make certain conforming changes to specify that the TERP account was labeled as an "account" in existing statutes, rather than as a "fund."

Effective date. Except as otherwise provided, the bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 3745 would ensure that the full amount of the fees paid by Texans to the Texas Emissions Reduction Plan (TERP) were correctly used under state law. TERP provides funding for certain programs intended to improve air quality in regions designated as "nonattainment" areas by the federal Environmental Protection Agency (EPA), including Dallas, El Paso, Houston, and San Antonio. As the EPA continues to impose stricter ozone standards for ambient air quality, more areas of the state are considered to be in nonattainment, furthering the need for TERP.

TERP is funded by the collection of certain fees and surcharges on vehicle titles, heavy-duty vehicles and equipment, and the registration and inspection of commercial vehicles, which are deposited into a dedicated account. Appropriations are made from the dedicated account to each TERP program at the Legislature's discretion during the budgeting process. Because more funds are collected for TERP than are appropriated, the TERP dedicated account has ballooned while certain TERP programs do not receive necessary funds and regions remain in nonattainment.

CSHB 3745 would ensure the continuation of TERP by extending the surcharges and fees dedicated to TERP until the end of the biennium in which every region of the state attained federal air quality standards. The bill also would end the funding gap between TERP revenue and appropriations by creating a new trust fund outside the state treasury and directing future TERP fees and surcharges to this fund. The balance of the trust fund could pay for TERP authorized programs without legislative appropriation. At the end of each biennium, unencumbered balances in the trust fund would be transferred to the dedicated account and would be available for certification of the budget.

Concerns that the bill could take money away from transportation projects are unfounded. Transfers from the State Highway Fund already are made to TERP; the bill simply would continue that funding stream until the state had gained attainment in all regions and the program expired. Further, while funds are required to be transferred from the State Highway Fund, an equal amount of revenue from the collection of certain vehicle title fees are directed to the Texas Mobility Fund and may be used for transportation projects.

OPPONENTS SAY:

CSHB 3745 would extend the diversion of funds which could be used for necessary transportation projects in the state away from the State Highway Fund (SHF) to TERP. Between fiscal 2009 and 2017, about $860 million was transferred from the SHF to TERP, and the yearly contribution from the fund will continue to grow annually based on historical patterns. The extension of this funding mechanism until the state attains national ambient air quality standards could mean that the diversion of SHF funds would continue indefinitely. Certain nonattainment areas of the state, such as El Paso, have air quality issues caused by an increasing population rather than existing manufacturing operations. There is no evidence that TERP programs will be able curb emissions given the state's rapidly increasing population, meaning that some areas of the state may never reach attainment and the transfer of SHF funds to TERP would continue in perpetuity. If the bill passes, a total of $1.4 billion could be transferred to TERP in the next 10 fiscal years, funds that have already been planned to be used for certain projects in the state's Unified Transportation Program.

SUBJECT: Amending certain operations of the Legislature

COMMITTEE: House Administration — committee substitute recommended

VOTE: 11 ayes — Geren, Howard, Anchia, Anderson, Flynn, Ortega, Parker, Sanford, Sherman, Thierry, E. Thompson

0 nays

WITNESSES: None

BACKGROUND: Interested parties suggest that state law should be updated to reflect the current practices of the legislative branch of government.

DIGEST: CSHB 4181 would make certain changes to the operation of the Legislature, including amending statutes regarding confidential communications, the convening of the Legislature, and the operations of committees.

Legislative privilege. The bill would specify that a communication was confidential and subject to legislative privilege if it was given privately, concerned a legislative activity or function, and was among or between a member or officer of either house, the lieutenant governor, a member of the governing body of a legislative agency, or a legislative employee.

Communications that were confidential and subject to legislative privilege would include:

- certain communications, including conversations, correspondence, and electronic communications, with a parliamentarian that relate to a request for information, advice, or opinions; and
- certain communications with staff of the Texas Legislative Council, including records relating to requests for the drafting of proposed legislation.

The bill would specify that certain communications were subject to attorney-client privilege if one of the parties was a legislative attorney and

the communication was made in connection with the attorney's provision of legal advice or services.

A member of the Legislature, the lieutenant governor, or an officer of either house who was a party to a communication could choose to disclose all or part of an otherwise confidential communication.

Legislative records. CSHB 4181 would make certain employees of the Legislature that stored records with or transferred records to the Legislative Reference Library or the Texas State Library and Archives Commission custodians of records for the purpose of public information laws. Those individuals also would possess, maintain, or control the records for purposes of litigation.

A member of the Legislature or certain legislative employees who used a system made available by the Texas Legislative Council to transmit, store, or maintain records would control the records for purposes of litigation and would be the custodian of the records.

The bill would define "legislative record" as any record created or received by the office of a member of the Legislature or the lieutenant governor during the official's term. A legislative record would not be considered a state record.

Record requests. Records relating to requests made of a parliamentarian or Texas Legislative Council staff would not be subject to request, inspection, or duplication under public information laws. A governmental body could withhold the records without a decision from the attorney general.

Legislative Reference Library. The Legislative Reference Library would be the depository for any legislative record. A member of the Legislature also could apply to the Legislative Library Board to place records in a depository other than the library.

The depository director would be responsible for the preservation of records in a depository other than the library. Ownership and legal custody of the records would remain with the Legislature, and the records

could not be intermingled with other holdings.

The library director would have to protect privileged or confidential legislative records held by the library from public disclosure at the direction of the legislative entity that transferred the records to the library. The bill would require the director to notify the appropriate public information officer upon a disclosure request as soon as practicable.

Convening the Legislature. CSHB 4181 would make amendments to statutes regarding the convening of the Legislature, including:

- requiring the lieutenant governor, or a designated senator, to attend and preside at the organization of the Senate;
- requiring the secretary of the Senate from the previous session, if present, to act as temporary secretary;
- specifying that the secretary of the Senate or chief clerk would call the members of each house by district in numerical order;
- requiring the presiding officer of each house to ensure that a journal of the proceedings were kept;
- specifying that the presiding officer of a house of the Legislature and the secretary of the Senate or chief clerk would have to attend each day until a quorum was present; and
- other changes made by the bill.

Standing committees. CSHB 4181 would remove the requirement of each standing committee to formulate legislative programs and initiate and draft certain legislation.

The bill would allow committees to meet in any location in the state as authorized by an adopted rule of the house during the interim. The bill also would allow each house to create special committees individually or jointly by rule.

General investigating committees. CSHB 4181 would require the president of the Senate or the House speaker to designate the chairman and vice chairman of a Senate or House general investigating committee,

respectively. A vice chairman and secretary no longer would be selected by the committee members.

A quorum of a joint general investigating committee would be constituted by a majority from each house's committee, rather than seven total members.

The bill would specify that information held by a general investigating committee would be confidential except as provided by the rules of the house establishing the committee.

Other provisions. CSHB 4181 would make certain amendments regarding the presiding officers' authority to make decisions on contracts for construction and maintenance of the Robert E. Johnson Sr. legislative office building.

The bill also would increase the maximum aggregate contributions allowed from a contributor for the speaker's reunion day ceremony from $500 to $1,000 cash or value.

An oath made in this state could be administered and certified by the secretary of the Senate or the chief clerk of the House.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Transferring certain irrigation water rights in the Edwards Aquifer

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Larson, Metcalf, Dominguez, Harris, T. King, Lang, Nevárez, Oliverson, Price, Ramos

0 nays

1 absent — Farrar

WITNESSES: For — Donald McLaughlin, City and County of Uvalde; Bruce Alexander, East Medina County Special Utility District, Texas Rural Water Association; Jared Capt, Landowners in Uvalde County; Chris Schuchart, Medina County; Buck Benson, Various EAA permit holders; (*Registered, but did not testify*: Vince DiPiazza, City of Uvalde; Billy Howe, Texas Farm Bureau)

Against — (*Registered, but did not testify*: Charles Flatten, Hill Country Alliance; Robert Turner, West Texas Groundwater Management Alliance)

On — Marc Friberg and Roland Ruiz, Edwards Aquifer Authority

BACKGROUND: Acts of the 73rd Legislature, Regular Session, 1993, ch. 626 establishes the Edwards Aquifer Authority to manage the Edwards Aquifer. Sec. 1.34 governs the transfer of irrigation water rights within the authority. A permit holder may lease permitted water rights, but a holder of a permit for irrigation use may not lease more than 50 percent of the irrigation rights initially permitted. The user's remaining irrigation water rights must be used in accordance with the original permit and must pass with transfer of the irrigated land.

Some suggest there is a lack of clarity about how water originally allocated for irrigation use can be used in the Edwards Aquifer Authority in areas where development has resulted in an inability to use land for agricultural purposes.

DIGEST:

CSHB 3656 would amend irrigation water transfers with the Edwards Aquifer Authority to allow a landowner to sever and transfer certain water rights for historically irrigated land. Irrigation water rights severed under the bill could change in purpose or place of use.

Under the bill, an owner of land within the Edwards Aquifer Authority could sever all or a portion of the remaining water rights for historically irrigated land that had become developed land, subject to the authority's approval. The owner could sever water rights in proportion to the part of the land that had been developed. Water rights used for irrigation that were tied to a portion of land that could not be developed because of its topography or location in a floodplain could be included in the proportion of land considered developed land.

A land owner also could sever water rights for historically irrigated land if the owner demonstrated that all or a portion of the land was no longer practicable to farm. To be considered no longer practicable to farm, the land could not have been irrigated for more than five years, and the landowner would need to submit documentation to the authority that due to development in close proximity to the land, agricultural activities could present health and safety concerns.

Rules adopted to implement the bill could not expand the type of land considered developed land or land considered no longer practicable to farm. The approval of a severance under the bill would be subject to a contested case hearing.

The Edwards Aquifer Authority also could adopt rules allowing the holder of an initial regular irrigation water permit to lease all or part of the permitted water rights to another person for irrigating land, including land not described in the initial permit, located in the authority. Adopted rules also could allow the permit holder to use the water rights temporarily for irrigation at a location other than the land described in the initial regular permit.

Rules adopted by the authority before the effective date of the bill on the severance of water rights from historically irrigated land and actions taken by the authority under those rules would be validated and confirmed in all

respects.

The bill would take effect September 1, 2019, and would apply only to transfers effective on or after that date.

SUBJECT: Requiring summons instead of warrants for certain parole violations

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson

0 nays

WITNESSES: For — Alycia Speasmaker, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Lauren Johnson, American Civil Liberties Union of Texas; Pamela Brubaker, Austin Justice Coalition; Melissa Shannon, Bexar County Commissioners Court; David Johnson, Grassroots Leadership; Kathleen Mitchell, Just Liberty; Sally Hernandez, Sheriffs Association of Texas; Russell Schaffner, Tarrant County; Sue Gabriel, Texas Advocates for Justice; Windy Johnson, Texas Conference of Urban Counties; Reginald Smith, Texas Criminal Justice Coalition; Charlie Malouff, Texas Inmate Families Association; Alexis Tatum, Travis County Commissioners Court; Carl F. Hunter II; Laurie Pherigo; Sandra Wolff)

Against — None

On — Allen Place, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Pamela Thielke, Texas Department of Criminal Justice)

BACKGROUND: Under Government Code ch. 508, the Texas Department of Criminal Justice (TDCJ) may issue a warrant for the return of a person released on parole or mandatory supervision if the person has been arrested for an offense or violates a rule or condition of release.

Government Code sec. 508.251(c)(1) allows TDCJ to issue a summons instead of a warrant if the person is not a releasee who is on intensive supervision or superintensive supervision, an absconder, or determined to be a threat to public safety.

TDCJ also may issue a summons instead of a warrant to a person charged only with committing a new offense after the first anniversary of the person's release if both the new offense and the releasee met certain criteria.

DIGEST:

CSHB 2559 would require, rather than allow, the Texas Department of Criminal Justice (TDCJ) to issue a summons instead of a warrant to a releasee under certain circumstances provided for under Government Code sec. 508.251(c)(1).

A warrant could not be issued for the return of a person unless the person had previously failed to appear for a hearing in response to a summons.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

By requiring TDCJ to issue a summons rather than a warrant for certain parole violations, CSHB 2559 would help nonviolent offenders with only minor parole violations maintain employment and remain productive members of the community pending disposition of charges against them. Releasees committing minor parole violations should be allowed an opportunity to show rehabilitative potential and progress, and the bill simply would give them that opportunity.

The bill would reduce county jail populations, allowing resources to be used more effectively and decreasing the burden on taxpayers. Jail beds should be saved for those who are a threat to public safety, and jail resources currently used for the supervision of nonviolent parolees with minor parole violations could better be used for others in custody.

OPPONENTS SAY:

CSHB 2559 would remove the discretion TDCJ currently has to make decisions on whether to issue a warrant for or a summons to a releasee for certain parole violations. The division should retain the flexibility to make such decisions on a case-by-case basis based on knowledge about the individuals and other circumstances.

SUBJECT: Requiring written notice of safe disposal of certain controlled substances

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — S. Thompson, Wray, Frank, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

3 absent — Allison, Coleman, Guerra

WITNESSES: For — (*Registered, but did not testify*: Jaime Capelo, Alliance of Independent Pharmacists; Cynthia Humphrey, Association of Substance Abuse Programs; T.J. Mayes, Bexar County Opioid Task Force; Dya Campos, H-E-B; Janis Carter, National Association of Chain Drug Stores; Marshall Kenderdine, Texas Academy of Family Physicians; Duane Galligher, Texas Independent Pharmacies Association; Dan Finch, Texas Medical Association; Bobby Hillert, Texas Orthopaedic Association; Stephanie Chiarello, Texas Pharmacy Association; Mackenna Wehmeyer, Texas Pharmacy Business Council; John Heal, Texas TrueCare Pharmacies; Holly Deshields, Walgreens; Mark Vane, Walmart; Susan Ostrand)

Against — (*Registered, but did not testify*: Ashley Bishop, AIP Texas; Dya Campos, H-E-B; Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists; Mackenna Wehmeyer, Texas Pharmacy Business Council; Bruce McAnally)

On — (*Registered, but did not testify*: Allison Benz, Texas State Board of Pharmacy)

BACKGROUND: Health and Safety Code sec. 481.075 requires a practitioner who prescribes a Schedule II controlled substance to record the prescription on an official prescription form or in an electronic prescription that includes certain information.

Some observers suggest addressing the growing rate of prescription drug

abuse in Texas by increasing awareness of safe disposal locations for unused drugs. Many access these drugs through medicine cabinets that contain leftover medication, and observers suggest providing safe disposal information when a controlled substance is dispensed would help reduce access to leftover prescriptions, curbing the potential of addiction.

DIGEST:

CSHB 2088 would require a person dispensing a Schedule II controlled substance prescription to provide written notice on the safe disposal of those drugs, with certain exceptions.

The notice would have to include information on locations at which Schedule II drugs were accepted for safe disposal or the address of a website specified by the Texas State Board of Pharmacy (TSBP) that provided a searchable database of locations.

Under the bill, a written notice would not be required if:

- the Schedule II drug was dispensed at a pharmacy or other location that was authorized to take back those drugs and regularly accepted those drugs for safe disposal; or
- the dispenser provided a mail-in pouch for surrendering unused drugs or chemicals to render any unused drugs unusable or non-retrievable.

TSBP would adopt rules governing the form of the written notice. The board could take disciplinary action against a person who failed to comply with the written notice requirements.

The bill would apply to a controlled substance prescription drug dispensed on or after January 1, 2020.

The bill would take effect September 1, 2019.

SUBJECT: Revising procedure for denials of coverage by TWIA

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Lucio, Oliverson, G. Bonnen, S. Davis, Julie Johnson, Lambert, C. Turner

1 nay — Paul

1 absent — Vo

WITNESSES: For — Craig Eiland, Texas Trial Lawyers Association; Ware Wendell, Texas Watch; Tom Furlow; Jay Kenigsberg; Stephanie Kenigsberg (*Registered, but did not testify*: Trace Finley, United Corpus Christi Chamber of Commerce; Jay Kenigsberg; Stephanie Kenigsberg)

Against — None

On — Jennifer Armstrong, Texas Windstorm Insurance Association (*Registered, but did not testify*: Marianne Baker and Elisabeth Ret, Texas Department of Insurance; David Durden, Texas Windstorm Insurance Association)

BACKGROUND: Insurance Code sec. 2210.573 governs the filing and processing of claims with the Texas Windstorm Insurance Association (TWIA). Sec. 2210.575 provides the procedure for disputes concerning denied coverage.

DIGEST: CSHB 2686 would permit a person who filed a claim with the Texas Windstorm Insurance Association (TWIA) that was wholly or partly denied to maintain an action against TWIA concerning the denial regardless of whether TWIA later accepted the previously denied portion of the claim.

The bill would establish that a claimant could raise as an issue in an action against TWIA whether TWIA's denial of coverage was proper, regardless of whether TWIA later accepted the claim.

The bill would take effect September 1, 2019, and would apply only to claims filed on or after that date.

SUBJECT: Freezing TWIA policy rates, changing funding structure

COMMITTEE: Insurance — committee substitute recommended

VOTE: 7 ayes — Lucio, Oliverson, G. Bonnen, Julie Johnson, Paul, C. Turner, Vo

1 nay — Lambert

1 absent — S. Davis

WITNESSES: For — (*Registered, but did not testify*: Jay Thompson, AFACT; Sally Bakko, City of Galveston; Ryan Brannan, Coastal Windstorm Insurance Coalition)

Against — Joe Woods, American Property Casualty Insurance Association; Paul Martin, National Association of Mutual Insurance Companies; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions (*Registered, but did not testify*: John Marlow, Chubb)

On — (*Registered, but did not testify*: Brian Ryder, Texas Department of Insurance; John Polak, Texas Windstorm Insurance Agency)

DIGEST: CSHB 4534 would temporarily prohibit the Texas Windstorm Insurance Association (TWIA) from raising rates without approval, would make certain changes to TWIA's funding structure and board processes, and would create an oversight board to study and report on TWIA's funding and funding structure.

Rate freeze. The bill would remove TWIA's authority to raise policyholder rates without prior approval from the commissioner of the Department of Insurance (TDI) beginning December 1, 2019. That authority would be re-established September 1, 2021.

Funding changes. The bill would prohibit TWIA from paying insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year with premium and other revenue earned

in a subsequent year. TWIA would be required annually to pay to the catastrophe reserve trust fund (CRTF) 20 percent of the association's net earned premium.

For losses resulting from an occurrence or series of occurrences in a catastrophe year in excess of premium and other revenue for TWIA for that catastrophe year, TWIA would be limited to paying from reserves and CRTF funds that were available before or accrued during that catastrophe year. Proceeds of any public securities issued or assessments made before or as a result of occurrences in a catastrophe year that resulted in insured losses could not be included in reserves available for a subsequent catastrophe year.

If the final estimate of losses for occurrences indicated member insurers could be subject to an assessment to pay excess losses, the board of directors would have to call an emergency meeting of TWIA members to notify them.

Funding oversight board. The bill would create a windstorm insurance legislative funding and funding structure oversight board composed of members of the Legislature, as specified in the bill.

The oversight board would be required to gather information on how TWIA's funding and funding structure operate, how the catastrophic risk pools of other states operate, and other necessary information. The board would hold public meetings to hear testimony from experts, stakeholders, and other interested parties on recommendations and proposals for sustainable funding and a sustainable funding structure.

The oversight board could request reports and other information from TDI, TWIA, and experts, stakeholders, and other interested parties.

It would have to prepare a report that included:

- an analysis of the current funding, funding structure, and sustainability of the association, including the association's reliance on debt and reinsurance; and
- recommendations for legislative action necessary to address

problems with the current funding and funding structure of the association and foster the stability and sustainability of the association.

The bill would require the board to deliver the report to the governor, the lieutenant governor, and House speaker no later than November 15, 2020.

Provisions of the bill related to the oversight board would expire September 1, 2021.

As soon as practicable after the effective date, TWIA would be required to propose to the insurance commissioner amendments to TWIA's plan of operation to be effective before the hurricane season of 2020 as necessary to implement the bill's provisions.

The bill would take effect December 1, 2019.

SUPPORTERS SAY:

CSHB 4534 would provide important reforms to the funding structure of the Texas Windstorm Insurance Association (TWIA) that would strike a better cost-sharing balance between coastal residents and private insurance companies. TWIA's rates have been increasing regularly for the past two decades, with another increase expected in the wake of Hurricane Harvey. The bill's two-year moratorium on TWIA rate increases would help coastal communities manage the insurance cost burden they face as they attempt to recover from the hurricane.

The bill's prohibition on TWIA using a current year's premiums to pay for previous years' losses would return TWIA to its intended funding structure.

The creation of a funding oversight board would give the Legislature a chance to study the rate issue and work with insurance companies to create solutions.

OPPONENTS SAY:

CSHB 4534's prohibition on raising rates could further hurt TWIA, which already is underfunded, and would increase the burden imposed on inland

insurance policyholders for the costs of coastal windstorm insurance. Current funding structures more fairly distribute the financial responsibility among policyholders, and inland Texans should not have to subsidize coastal homes and businesses.

SUBJECT: Exempting license holder display of holstered gun in car from an offense

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 6 ayes — Nevárez, Paul, Burns, Clardy, Lang, Tinderholt

2 nays — Goodwin, Israel

1 absent — Calanni

WITNESSES: For — Rachel Malone, Gun Owners of America; Rick Briscoe, CJ Grisham and John Swicegood, Open Carry Texas; Michael Cargill, Texans For Accountable Government, Log Cabin Republicans; Terry Holcomb, Texas Carry; Walter Barnes; Kyle Guarco; Bradley Hodges; Eric Schafer; (*Registered, but did not testify*: Elysse Brenner, Empowered 2A; Angela Smith, Fredericksburg Tea Party; Justin Delosh and Amos Postell, Lone Star Gun Rights; Tara Mica, National Rifle Association; James Dickey, Republican Party of Texas; Walter West II, Republican Party of Texas, Texas Senate District 4, Veterans; Alice Tripp, Texas State Rifle Association; Jason Vaughn, Texas Young Republicans; Stephanie Franklin, The Liberty Project of Texas; and 53 individuals)

Against — (*Registered, but did not testify*: Jo DePrang, Children's Defense Fund; Gyl Switzer, Texas Gun Sense)

On — (*Registered, but did not testify*: Steve Moninger, Department of Public Safety)

BACKGROUND: Penal Code sec. 46.035(a) makes it an offense for a licensed person to carry a handgun on or about their person and intentionally display the handgun in plain view of another person in a public place, with the exception of handguns that are partially or wholly visible but carried in a shoulder or belt holster by the license holder.

DIGEST: CSHB 3016 would add an exemption for the offense under Penal Code sec. 46.035(a) if a person licensed to carry a handgun had a partially or

wholly visible handgun in a holster and the handgun and license holder were in a motor vehicle.

The bill would apply only to an offense committed on or after January 1, 2020.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSHB 3016 would close a loophole that makes it a crime for a licensed handgun owner to have their holstered handgun in a car but not on their person. The bill would not increase the risk of accidental firearm discharge in cars. Rather, it would increase safety because the firearm could be stored in a more secure location than on the gun owner's person.

OPPONENTS SAY:

CSHB 3016 could increase the risk of gun accidents by allowing licensed gun owners to not carry their handguns while in the car. This could lead to children or other people in a car accidentally accessing or firing the weapon.

SUBJECT: Increasing school notification requirements for arrested students

COMMITTEE: Public Education — favorable, without amendment

VOTE: 13 ayes — Huberty, Bernal, Allen, Allison, Ashby, K. Bell, Dutton, M. González, K. King, Meyer, Sanford, Talarico, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Joseph McKenna, Comal ISD; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Grover Campbell, Texas Association of School Boards; Lonnie Hollingsworth, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Dee Carney, Texas School Alliance; Craig Goralski, Texas School District Police Chiefs Association)

Against — None

On — (*Registered, but did not testify*: Von Byer, Texas Education Agency; Craig Schiebel)

BACKGROUND: Code of Criminal Procedure art. 15.27 requires law enforcement agencies to provide the school superintendent with an oral and written notice when a student is arrested for certain offenses. The notices must include enough information for the superintendent to be able to determine whether there is a reasonable belief that the student committed a felony. Art. 15.27(k) requires the notices to include all pertinent details of conduct, including any assaultive behavior or other violence or any weapons used or possessed during the commission of the offense or conduct.

Education Code sec. 37.006(d) allows for the removal of a student from class and placement of the student in a disciplinary alternative education program if the superintendent has a reasonable belief that the student committed a felony other than aggravated robbery or certain other offenses and if the continued presence of the student in the regular

classroom threatens the safety of other students or teachers or will be detrimental to the educational process.

Family Code sec. 58.008(d) allows a child's law enforcement records to be inspected or copied only by juvenile justice agencies, criminal justice agencies, the child, or the child's parent or guardian.

DIGEST:

HB 1825 would require law enforcement agencies to provide school superintendents with sufficient information for the school to prepare a threat assessment or safety plan related to an arrested student.

The notices provided to an arrested student's school superintendent by law enforcement agencies would have to contain sufficient details of the arrest or referral and the acts allegedly committed by the student to allow the superintendent to determine whether it was necessary to conduct a threat assessment or prepare a safety plan related to the student.

Law enforcement agencies would have to provide the superintendent with information requested for the purpose of conducting a threat assessment or safety plan related to the student. School boards could enter into a memorandum of understanding with law enforcement agencies on the exchange of information relevant to conducting a threat assessment or preparing a safety plan. Absent a memorandum of understanding, any information requested by the superintendent would have to be considered relevant. The superintendent could not use this information to determine whether there was a reasonable belief the student had committed a felony.

The bill would allow a superintendent to access law enforcement records concerning a child for the purpose of conducting a threat assessment or preparing a safety plan related to the child.

The bill would take effect September 1, 2019, and would apply only to information related to an arrest or referral made on or after the effective date.

SUBJECT: Imposing time requirements to qualify as eco-labs under the property tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 9 ayes — Burrows, Bohac, Cole, Martinez Fischer, Murphy, Noble, Sanford, Shaheen, Wray

1 nay — Guillen

1 absent — E. Rodriguez

WITNESSES: For — Doug Smithson, Texas Rural Appraisal Districts, Texas Association of Appraisal Districts; Melisa Dickerson; (*Registered, but did not testify*: Michelle Cardenas, Rural Chief Appraiser Inc.; Michael Pacheco, Texas Farm Bureau; Monty Wynn, Texas Municipal League; Deece Eckstein, Travis County Commissioners Court)

Against —Eric Opiela, South Texans' Property Rights Association; and eight individuals; (*Registered, but did not testify*: nine individuals)

BACKGROUND: Texas Constitution Art. 8 sec. 1(b) requires that all real property in this state be taxed in proportion to its value. Art. 8 sec. 1-d-1 requires open-space land devoted to farm, ranch, or wildlife management purposes or to timber production be taxed on the basis of productive capacity.

Tax Code sec. 23.51(1) defines qualified open-space land as:

- land currently that is devoted to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years; or
- land that is used principally as an ecological laboratory by a public or private college or university.

DIGEST: CSHB 639 would amend the definition of "qualified open-space land" in the Tax Code. For land that is used principally as an ecological laboratory by a public or private university to qualify, the bill would require the land

to have been used principally in that manner by a college or university for five of the preceding seven years.

The bill would take effect January 1, 2021, and would apply beginning with the tax year that begins on the effective date to land that did not first qualify for appraisal as qualified open-space land in the 2014 through 2020 tax years. For land that first qualified during those tax years, the bill would apply beginning with the tax year that begins January 1, 2027.

SUPPORTERS SAY:

CSHB 639 would close an unfair tax loophole that allows certain property owners to pay for special tax treatment unavailable to all other owners by imposing time requirements on the qualification of land as an eco-lab.

Eco-labs can be abused by landowners and developers. Landowners pay professors from universities and colleges to conduct research on their land in order to qualify the land as an eco-lab and thus for appraisal as qualified open-space land. This research often consists of the same study conducted multiple times on multiple parcels of land. The loss of tax revenue that results from designation of land as an eco-lab shifts the property tax burden onto other taxpayers. The bill would address this problem by requiring that land be used as an eco-lab for a period of five of the previous seven years in order to qualify for appraisal as qualified open-space land.

CSHB 639 also would make the guidelines to qualify as an eco-lab more uniform with those for agricultural use and timber production, which currently are subject to the same time requirements as are set out for eco-labs in this bill. The current lack of uniformity is unfair to farmers and ranchers, who often lose money in the first five years of agricultural use, during which time their property taxes are still based on the market value of the land.

The bill would have no impact on large academic research projects.

OPPONENTS SAY:

CSHB 639 would reduce the financial incentive for landowners to participate in the eco-lab program, which could negatively impact scientific research and education in the state.

In contrast to land used in agriculture or timber production, land used as an eco-lab generates expenses but no income. Landowners currently have to pay universities and colleges to conduct research on their land during the period in which they attempt to qualify the land as an eco-lab in addition to paying property taxes based on the land's market value during that period. Forcing land to be used as an eco-lab for five years would be cost-prohibitive for many landowners.

Eco-labs provide researchers and students with valuable access to private land. Important research is being done as a result of eco-labs. Eco-labs should be treated differently than agriculture or timber production because they exist to promote science, training, and education in the state.

NOTES:

According to the Legislative Budget Board, passage of the bill would limit ecological laboratory land from special open-space land appraisal to land that had been used in that manner for five of the preceding seven years, limiting the growth of new ecological laboratory land that would qualify for special open-land appraisal. As a result, taxable property value could be increased and the related costs to the Foundation School Fund could be decreased through the operation of the school finance formulas.

SUBJECT: Amending requirements for a suit for the removal of human remains

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

WITNESSES: For — Samuel Collins III

Against — None

On — Michael Elliott; (*Registered, but did not testify*: Patricia Mercado-Allinger and Jennifer McWilliams, Texas Historical Commission)

BACKGROUND: Health and Safety Code ch. 711 governs cemeteries and crematories in the state.

Sec. 711.004 establishes rules related to the removal of human remains from a cemetery. Remains may be removed from a plot in a cemetery with the written consent of certain family members. If consent cannot be obtained for the removal of a decedent's remains, the remains may be removed by permission of a district court. Before the date of application to the court for permission to remove the remains, notice must be given to:

- the cemetery organization operating the cemetery in which the remains or interred or, if the cemetery organization cannot be located or does not exist, the Texas Historical Commission (THC);
- each family member whose consent is required for the removal of the remains; and
- any other person that the court requires to be served.

This notice must be served no later than 11 days before the date of the application to the court or no later than 16 days before that date if notice is given by certified or registered mail.

Under sec. 711.010, an owner of property that contains an unknown or abandoned cemetery may petition a district court to order the removal of any dedication for cemetery purposes and the removal of the cemetery's human remains. Notice of the petition must be given to THC and the relevant county historical commission, and THC or the county historical commission may intervene in the suit.

If the court orders the removal of the human remains and they had not previously been removed, the court must order the removal of the human remains to a perpetual care cemetery or a municipal or county cemetery.

Under sec. 711.036, an owner of property adjacent to a cemetery for which no cemetery organization or other governing body exists may petition a district court to order the removal of any cemetery dedications and human remains in the cemetery. The court is required to order the removal of the remains and dedications if the removal is found to be in the public interest. THC and the county historical commission may intervene in such a suit.

DIGEST:

HB 2430 would expand the persons and entities with whom a district court could consult in suits to determine whether human remains should be removed from certain cemeteries. The bill also would allow a court to order that remains from unknown or abandoned cemeteries could be removed to another portion of the same property.

The bill would permit a court to require that additional persons or entities be given notice of an application to remove human remains after the date the application was filed. Notice would have to be served within 11 days after the judge's order but could not be required for any court-appointed representative or official.

When considering a petition to remove any cemetery dedication or human remains under Health and Safety Code secs. 711.010 or 711.036, a district court could designate or appoint any person, party, court-appointed representative, or official necessary to assist in determining whether removal was in the public interest. The court also could consult with the Texas Historical Commission and the county historical commission in making this decision.

On petition from the owner of property on which an unknown or abandoned cemetery was discovered or located, a court could order that the remains be removed to any other place on the owner's property that the district court found to be in the public interest.

The bill would apply to any suit involving the removal of remains from an abandoned, unknown, or unverified cemetery pending in a trial court on the bill's effective date or that was filed on or after that date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Restricting certain lobbyist expenditures from political campaigns

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — Phelan, Guerra, Harless, Holland, Hunter, P. King, Raymond, Springer

0 nays

5 absent — Hernandez, Deshotel, Parker, E. Rodriguez, Smithee

WITNESSES: For — None

Against — (*Registered, but did not testify*: Karen Kelley; Mohan Rao; Gregory Young)

BACKGROUND: Government Code sec. 305.029(b) prohibits registered lobbyists who were formerly candidates or officeholders from using the political contributions that they received as candidates or officeholders to make contributions to other candidates, officeholders, or political committees.

DIGEST: CSHB 2677 would prohibit a registered lobbyist, and anyone acting on the lobbyist's behalf and with the lobbyist's consent, from knowingly making or authorizing lobbying expenditures, political contributions, or political expenditures from political contributions accepted by:

- the lobbyist when the lobbyist was a candidate or officeholder;
- a specific-purpose committee that supported the lobbyist as a candidate or assisted the lobbyist as an officeholder; or
- a political committee that accepted political contributions from the lobbyist or above-described specific-purpose committee in the two years immediately before the political contributions or expenditures were made.

A person who knowingly made or authorized political contributions or direct campaign expenditures from political contributions the person accepted as a candidate or officeholder also could not lobby for the next

two years after such expenditures or contributions were made.

This prohibition would not apply to individuals who communicated directly with the legislative or executive branch only to influence legislation or administrative action on behalf of nonprofit organizations, low-income individuals, or individuals with disabilities and who did not receive compensation other than reimbursement for actual expenses for engaging in the communication.

The bill would take effect September 27, 2019, and would apply only to political contributions, political expenditures, direct campaign expenditures, and lobbying expenditures made on or after that date.

SUBJECT: Limiting benefit loss for certain TRS retirees who resume service

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 11 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

WITNESSES: For — Beaman Floyd, Texas Association of School Administrators; Brock Gregg, Texas Retired Teachers Association; (*Registered, but did not testify*: Dwight Harris, Texas American Federation of Teachers; Barry Haenisch, Texas Association of Community Schools; Will Holleman, Texas Association of School Boards; Ann Fickel, Texas Classroom Teachers Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Lisa Dawn-Fisher, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators; and eight individuals)

Against — None

On — Brian Guthrie, Teacher Retirement System; (*Registered, but did not testify*: Kevin Wakley, Teacher Retirement System)

BACKGROUND: Government Code sec. 824.602 establishes exceptions to the loss of benefits for a retired school employee who resumes service at a Texas public educational institution. Under sec. 824.601, a retiree who worked in excess of one-half time in a month is not entitled to a pension payment for that month, with an exception for retirees whose effective date of retirement was on or before January 1, 2011.

DIGEST: CSHB 2227 would change the effective date of retirement that would trigger an exemption for certain retired school personnel from the provision establishing that a retiree was not entitled to retirement benefit payments for any month in which the retiree was employed by a Texas public educational institution. The effective date of retirement for this

purpose would change from on or before January 1, 2011, to on or before August 31, 2018.

The bill also would create an exception to the limitation that retired school personnel who had been separated from active service for less than one year could not work in a public school for more than one-half time without their monthly retirement benefit payments being withheld. Under this exception, a retiree who exceeded that limit because of an exigent event that was beyond the retiree's control, including a weather-related event, could not have monthly retirement benefits withheld.

The Teacher Retirement System (TRS) would have to immediately notify a retiree who exceeded the limitation and, if appropriate, provide a 30-day period in which the retiree could take corrective action to avoid exceeding the limitation again in the future.

A retiree who received notice would have to return to TRS the prorated amount of the monthly benefit payment that was attributable to the period in which the retiree exceeded the work limitation, or pay the difference between the actual hours for which the retiree was compensated and the hours the retiree was permitted to work under the one-half time limitation.

The TRS board of trustees would have to adopt rules to implement the bill.

The bill would take effect September 1, 2019, and would apply to a benefit payment that became payable on or after that date.

SUPPORTERS SAY:

CSHB 2227 would correct a situation in which some retired school personnel have unwittingly lost an entire month's pension check for exceeding the half-time work limitation by even a few hours. Some of these retirees may not have known about the limitation or might have exceeded it because of a situation beyond their control, such as a bus getting a flat tire or a weather event. The bill would create a process for the Teacher Retirement System (TRS) to warn retirees of a possible violation and would limit the amount of pension benefits retirees would have to forfeit to those for extra hours that they worked.

The current penalties for working more than half-time are too harsh and limit the ability of retirees who need to supplement their retirement checks to go back to work. As health care premiums for retired teachers have increased, many have found it necessary to return to the workforce. In addition, school districts in some areas of the state such as West Texas seek out retirees to return to the classroom or work as bus drivers because of serious workforce shortages.

CSHB 2227 would not create a financial incentive for teachers to retire with the intention of quickly returning to work because they would have to pay TRS back for any hours worked that exceeded the half-time limitation.

OPPONENTS SAY:

By creating exceptions to existing limitations on retirees being rehired by school districts and lowering the financial penalty for retirees who exceeded those limitations, CSHB 2227 could provide incentives for retirees to retire and then be rehired for the same job. The current penalty was put in place to slow a trend of school personnel retiring earlier than their full retirement age with the knowledge that they could return to work and collect both a paycheck and a pension. The impact of early retirements can result in increased payouts by the TRS pension fund and the TRS health insurance program for retired teachers.

SUBJECT: Establishing higher education degree plans for Texas military members

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — C. Turner, Stucky, Button, Frullo, Howard, E. Johnson, Schaefer, Walle

0 nays

3 absent — Pacheco, Smithee, Wilson

WITNESSES: For — (*Registered, but did not testify*: Dana Chiodo, CompTIA; Priscilla Camacho, Dallas Regional Chamber; Mike Meroney, Texas Association of Manufacturers)

Against — None

On — Robert Bodisch, Texas Military Department

BACKGROUND: Government Code sec. 437.001 defines "active military service" as state active duty service, federally funded state active duty service, or federal active duty service. The term does not include service performed exclusively for training, such as basic combat training, advanced individual training, annual training, inactive duty training, and special training periodically made available to service members.

Interested parties have suggested that the Texas State Guard could benefit from additional ways to improve recruitment and retention to better meet the State Guard's goal of doubling authorized forces by 2021.

DIGEST: CSHB 3601 would authorize the Texas Higher Education Coordinating Board (THECB) to approve an institution of higher education recognized by the board to offer a degree in coordination with the Texas Military Department that used alternative methods of determining mastery of content, including competency-based education.

To be eligible for the degree, a person would have to be a high school

graduate or possess an equivalent diploma, complete and meet the standards of the degree plan, and satisfy a minimum active military service obligation to the Texas military forces. The minimum active military service requirements would entail:

- two years of service for an associate degree;
- four years of service for a baccalaureate degree; and
- six years of service for a graduate degree.

THECB could propose rules to establish requirements under which a person's verified training and experience could serve as proof of subject matter knowledge.

CSHB 3601 would apply beginning with degree plans offered for enrollment for the 2020-2021 academic year.

The bill would take effect September 1, 2019.

SUBJECT: Revising criteria for former justices and judges to be visiting judges

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

1 absent — Y. Davis

WITNESSES: For — (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; George Christian, Texas Civil Justice League)

Against — None

BACKGROUND: Government Code sec. 74.003 allows the chief justice of the Texas Supreme Court to assign qualified retired justices or judges of certain courts for active service. Eligible justices or judges must have served at least 96 months in a district, statutory probate, statutory county, or appellate court, with at least 48 of those months in an appellate court. The individual cannot have been removed from office and must be in good standing with the State Commission on Judicial Conduct and up to date on annual educational requirements. The individual also must certify to the chief justice a willingness not to appear and plead as an attorney in any court in the state for a period of two years.

Interested parties note that there is currently a shortage of eligible judges and justices available to serve as visiting judges.

DIGEST: HB 2547 would broaden the eligibility requirements for a qualified retired justice or judge to be assigned to active service by the chief justice of the Supreme Court.

Former, not just retired, justices and judges could be assigned to active service. The number of months the justice or judge would have to have served in a district, statutory probate, county probate, or appellate court to

be eligible for assignment would be reduced from 96 to 72. The bill would require that a judge or justice certify to the chief justice a willingness not to appear and plead as an attorney for two years in courts in which the individual served as a justice or judge. Judges and justices would be ineligible due to a removal from office only if the removal was because of misconduct or incapacity.

The bill would take effect September 1, 2019, and would apply only to a certification or recertification that took effect after the effective date.

SUBJECT: Derivative proceedings for limited partnerships

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Farrar, Julie Johnson, Krause, Meyer, Neave, Smith, White

0 nays

1 absent — Y. Davis

WITNESSES: For — Michael Tankersley, Texas Business Law Foundation; (*Registered, but did not testify*: David Harrell, John Kuhl, and Chuck Mains, Texas Business Law Foundation)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

On — Briana Godbey, Texas Secretary of State

BACKGROUND: A derivative proceeding is a legal action brought by a business entity owner, such as a shareholder, partner, or member, on behalf of the business entity against a third party or parties. These proceedings allow shareholders, limited partners, or members of certain companies to pursue a claim in the right of the company itself and to recover damages for injuries the company suffered.

Business Organizations Code ch. 21, subch. L governs derivative proceedings applicable to corporations; ch. 101, subch. J governs such proceedings for limited liability companies; and ch. 153, subch. I governs such proceedings for limited partnerships.

Interested parties have suggested that the law governing derivative proceedings for different organizational types was developed from diverse sources of law, causing the current statutes to be inconsistent. In particular, provisions governing derivative proceedings for limited partnerships differ significantly from those applicable to the other two

organizational types.

DIGEST:

CSHB 3603 would modify certain aspects of derivative proceedings involving corporations, limited liability companies (LLCs), and limited partnerships (LPs).

Standing to bring proceeding. The bill would prohibit a shareholder, member, or partner from instituting a derivative proceeding against a corporation, LLC, or LP after a conversion for an act or omission that occurred prior to the date of conversion unless:

- the shareholder, member, or partner was an equity owner of the converting entity at the time of the act or omission; and
- the shareholder, member, or partner fairly and adequately represented the interest of the business in enforcing its right.

The bill also would change other criteria for determining whether a limited partner could institute or maintain a derivative proceeding to conform to criteria used for partners in LCs and shareholders of corporations under current law.

Demand. Under the bill, a plaintiff in a case involving an LP would no longer be required to file a complaint with a court showing what effort, if any, the plaintiff had made to secure initiation of the action by a general partner or the reasons for not making that effort. Instead, the limited partner would be required to file a written demand with the limited partnership stating with particularity the act, omission, or other matter that was the subject of the claim or challenge and requesting that the limited partnership take suitable action.

A limited partner could not institute a derivative proceeding until the 91st day after filing the written demand. The 90-day waiting period would not be required or would terminate if the limited partner was notified that the demand had been rejected by the LP, the limited partnership was suffering irreparable injury, or irreparable injury to the limited partnership would result by waiting for the expiration of the waiting period.

Determination by independent persons. The bill would modify how a

corporation lawfully determined how to proceed on allegations made in a demand or petition relating to a derivative proceeding. The bill would eliminate a prohibition on holding a meeting and vote to determine this in the presence of interested directors, provided that all of the independent and disinterested directors were present, regardless of whether they constituted a quorum of the board. These directors would decide the question by majority vote.

Alternatively, one or more of the independent and disinterested directors by majority vote could appoint a committee of one or more independent and disinterested directors to decide the issue. The bill would eliminate a requirement for this vote to be taken at a meeting of the board of directors.

The bill would require similar determination processes for LLCs and LPs. For an LLC, a majority of independent and disinterested governing persons could make an affirmative vote on how to proceed on allegations, regardless of whether those persons were a majority of the governing persons of the LLC. Alternatively, an appointed committee of one or more disinterested governing persons could make the determination, even if the independent and disinterested governing persons who appointed the committee were not a majority of the governing persons of the LLC.

For an LP, a determination of how to proceed would have to be made by an affirmative vote of the majority of:

- the independent and disinterested general partners of the limited partnership, whether one or more, even if the partners were not a majority of the LP's general partners;
- a committee consisting of one or more independent and disinterested individuals appointed by a majority of the independent and disinterested general partners; or
- a panel of one or more independent and disinterested individuals appointed by the court on a motion by the limited partnership.

Stay of proceeding. The bill would clarify that an initial stay of a derivative proceeding concerning a corporation or LLC could not last more than 60 days. On motion, the stay could be reviewed every 60 days for continuation if the corporation or LLC provided the court and the

shareholder or member with a written statement for the status of the review and reasons why an extension for a period of not more than 60 additional days was appropriate. The court would be required to grant the extension if the court determined that the continuation was appropriate in the interests of the corporation or LLC. The court would no longer be allowed to renew such stays for an indefinite number of 60-day periods.

The bill would apply the same process for granting and extending stays of proceedings that governs derivative proceedings involving corporations and LLCs to derivative proceedings involving LPs.

Discovery. If an LP proposed to dismiss a derivative proceeding, discovery by a limited partner would be limited to:

- facts relating to whether the individual or group making a decision to dismiss the complaint were independent and disinterested;
- the good faith of the inquiry by that person or group; and
- the reasonableness of the procedures followed by the person or group in conducting the review.

A court could not expand discovery to include the subject matter of the derivative proceeding itself unless the court determined after notice and hearing that a good faith review of the allegations had not been made by an independent and disinterested person or group in accordance with the bill's requirements.

Tolling of statute of limitations. The bill would revise the period for which a written demand to a corporation, LLC, or LP would toll the statute of limitations on the derivative proceeding-related claim for which the demand was made. A demand would toll the statute of limitations for the later of either the 31st day after the expiration of any statutory waiting period or the 31st day after the expiration of any granted stay.

Dismissal. The bill would establish requirements for dismissal of derivative proceedings concerning LPs similar to those applicable to LLCs and corporations. A court would be required to dismiss a derivative proceeding on a motion by an LP if the independent and disinterested person or group of persons responsible for determining how to proceed

determined in good faith, after conducting a reasonable inquiry, that continuation of the proceeding was not in the best interests of the LP.

In determining whether a derivative proceeding should be dismissed, the burden of proof would be on the plaintiff limited partner if the LP's finding with regard to a derivative proceeding was made by qualified independent or disinterested individuals or if the decision was made by a court-appointed panel. In any other circumstance, the burden of proof would be on the LP.

The bill also would require a court to be sitting in equity as the finder of fact in order to grant a motion to dismiss by a corporation, LLC, or LP.

Discontinuance or settlement. A derivative proceeding concerning an LP could not be discontinued or settled without court approval. A court would have to direct that notice be given to the affected partners of an LP if the court determined that a proposed discontinuance or settlement would substantially affect the interests of other partners.

Payment of expenses. In derivative proceedings concerning LPs, the bill would establish certain requirements relating to the payment of attorney's fees, investigative costs, or other expenses.

Foreign entities. Certain provisions of the bill would not apply to the internal affairs of foreign corporations, LLCs, or LPs. Rather, such companies would be governed under the laws of the jurisdiction of their formation, except as provided in the bill.

Closely held companies. The bill would narrow existing procedural exemptions for closely held corporations and LLCs, defined as those having fewer than 35 shareholders or members and not listed on a national securities exchange or regularly quoted in an over-the-counter market. Procedural exemptions for such entities would apply only to a claim against certain company members, shareholders, or office holders.

The bill would apply the same requirements to proceedings involving closely held LPs, and would allow a court to treat a derivative proceeding brought by a partner in a closely held LP as a direct action for the limited

partner's own benefit. A court in this circumstance could order payment of a recovery directly to the plaintiff.

No direct cause of action. The bill would stipulate that other provisions of state law governed whether a shareholder, partner, or LLC member had a direct cause of action or right to sue a company director, officer, member, partner, or other applicable person affiliated with the company and the derivative proceeding in question. Provisions of the bill that related to closely held corporations, LLCs, or partnerships could not be construed to create a direct cause of action or right to sue.

The bill would take effect September 1, 2019, and would apply only to a derivative proceeding instituted after the effective date of the bill.